

STATE OF MICHIGAN
COURT OF APPEALS

CATHERINE J. LOWELL,

Plaintiff-Appellant,

v

WASTE MANAGEMENT OF MICHIGAN, INC.,

Defendant-Appellee.

UNPUBLISHED

April 15, 2003

No. 237617

Washtenaw Circuit Court

LC No. 00-001345-NO

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order of the circuit court granting summary disposition in her negligence action in favor of defendant pursuant to MCR 2.116(C)(10) on the ground that the dangerous condition that allegedly caused her fall was open and obvious. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the open and obvious doctrine does not apply to the negligent activities of a private contractor undertaken on the land of another. Although plaintiff failed to advance this argument below, we can address its merits because the issue raised involves a question of law and the facts necessary for its resolution have been presented. *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

A motion brought under MCR 2.116(C)(10) requires this Court to review the pleadings, affidavits, and other documentary evidence submitted, make all reasonable inferences therefrom, and determine whether a genuine issue of material fact exists, giving the nonmoving party the benefit of the doubt. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

The trial court erred when it granted summary disposition in favor of defendant after finding that the height differential in the walkways that caused plaintiff's fall constituted an open and obvious danger. Other than products liability, see e.g., *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379; 491 NW2d 208 (1992), an application of the open and obvious doctrine has been limited to premises liability actions brought against the owners or possessors of land, see e.g., *Bertrand*, *supra* at 606. Social policy imposes a duty on the possessors of land to protect their invitees on the basis of a special relationship that exists between them. *Id.* at 609. The rationale for imposing liability on the owner or possessor of land

is that the invitor is in a better position to control safety aspects of his or her property when his invitees entrust their own protection to him or her while entering his or her property. *Id.*

Defendant was not the possessor or owner of the land upon which plaintiff's injury took place. Instead, defendant is an independent contractor hired by the landowner to remove refuge from the property. The duties and policy reasons behind premises liability do not apply to defendant.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly

/s/ Karen M. Fort Hood